The Cartoon Network LP. LLLP et al v. CSC Holdings, Inc. et al Doc. 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CARTOON NETWORK LP, LLLP and CABLE NEWS NETWORK LP, LLLP, :

Plaintiffs, : 06 Civ. 4092 (DC)

v. :

CSC HOLDINGS, INC. and CABLEVISION SYSTEMS CORPORATION, :

Defendants. :

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CABLEVISION SYSTEMS CORPORATION and CSC HOLDINGS, INC., :

Counterclaim-Plaintiffs, :

v. :

THE CARTOON NETWORK, LP, LLLP and CABLE NEWS NETWORK LP, LLLP, :

Counterclaim-Defendants. :

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CABLEVISION SYSTEMS CORPORATION and CSC HOLDINGS, INC., :

Third Party-Plaintiffs, :

v. :

TURNER BROADCASTING SYSTEM, INC., CABLE NEWS NETWORK LP, LLP, TURNER NETWORK SALES, INC., TURNER CLASSIC MOVIES, L.P., LLLP, TURNER NETWORK TELEVISION LP, LLLP, and THE CARTOON NETWORK LP, LLP :

Third Party-Defendants. :

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ANSWER TO COMPLAINT, COUNTERCLAIM, AND THIRD PARTY CLAIM

Defendants Cablevision Systems Corporation and CSC Holdings, Inc. (collectively "Cablevision") answer the Complaint for Declaratory and Injunctive Relief ("Complaint"), counterclaim, and file a third party claim as follows:

INTRODUCTORY STATEMENT

In the seminal case of *Sony Corporation of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), the Supreme Court held that when consumers record television programming available to them at a given time for personal viewing at a later time ("time-shifting"), they are engaged in a "fair use" of copyrighted material and do not violate the Copyright Act. The Court further held that Sony was not liable for supplying the technology that allows the consumer to make such copies. The recording technology at issue in *Sony* was the Sony Betamax video recorder. Soon, the Sony Betamax was replaced by the video cassette recorder ("VCR") as the dominant time-shifting device. By the 1990s, VCRs had become a staple in households across the United States.

In recent years, digital video recorders ("DVRs") have begun to replace VCRs. DVRs, which were first introduced in 1999 and which Cablevision has provided to its customers since 2004, allow consumers to store recorded television programming for later viewing on a hard drive located within a set-top box connected to the consumer's television set. No programmer has ever sued over Cablevision's (or any other DVR provider's) practice of supplying traditional set-top storage DVRs to its customers. Thus, the technology that consumers use to time-shift television programming has progressed (from the Betamax to the VCR and now the DVR), but the principle that time-shifting is fair use has remained settled law under *Sony*, and the provision of technology to allow consumers to time-shift has remained unchallenged.

This case is about Cablevision's new product offering, the remote storage digital video recorder ("RS-DVR"). The RS-DVR, like traditional set-top storage DVRs, remains a time-shifting device that facilitates customer fair use. The functionality and technology of the RS-DVR are identical to traditional set-top storage DVRs in all relevant respects; the only change is to the physical location at which programs recorded by Cablevision's customers are stored. Rather than on a hard drive within the set-top box, programs will now be stored in the customer's dedicated computer memory on servers located at Cablevision's facilities. Significantly, the only programs stored in a particular customer's dedicated memory will continue to be programs recorded by that customer. The physical relocation of computer memory, moreover, will not affect how customers operate the DVR device; the customer still initiates all copying and playback of recorded programming through his or her remote control, just as he or she does with the traditional set-top storage DVR. To play back programs recorded with RS-DVR, customers will still retrieve from their own dedicated computer memory their own unique copies that they have recorded themselves. And just as with traditional set-top storage DVRs, programs that customers record using RS-DVR will be accessible and viewable only in the customer's home.

In sum, because the RS-DVR—like the Betamax, the VCR and the traditional set-top storage DVR before it—enables consumers to do nothing more than record television programming for later personal viewing, it does not infringe copyrights. Plaintiffs' Complaint states a copyright claim only by misunderstanding the way Cablevision's RS-DVR product works and mischaracterizing it as a "video on demand" ("VOD") service. As explained in more detail below, however, the RS-DVR is no more a VOD service than traditional set-top storage DVRs are VOD services. Plaintiffs' new challenge to Cablevision's product represents a misguided invocation of copyright law, which would stifle innovation and roll back the rights of consumers.

ANSWER

As to the specific allegations of the Complaint, Cablevision states as follows:

1. Cablevision denies the allegations in paragraph 1, except that Cablevision admits that it has entered into certain license agreements with Plaintiffs The Cartoon Network LP, LLLP ("TCN LLLP") and Cable News Network LP, LLLP ("CNN LLLP") (collectively, "Plaintiffs") and refers to them for their complete and accurate contents. Answering further, Cablevision states that it intends to offer its customers RS-DVRs and that such RS-DVR customers will copy and store programming on their specific dedicated memory on Cablevision servers, just as Cablevision's current DVR customers now copy and store programming on dedicated computer memory on hard drives within the traditional set-top storage DVR boxes provided by Cablevision to its customers. Customers will then later retrieve and play their own unique copies that they have recorded themselves from their own dedicated computer memory.

2. Cablevision is without sufficient information to form a belief as to the truth of the allegations in paragraph 2.

3. Cablevision denies the allegations in paragraph 3, except that Cablevision admits that it has entered into license agreements with Plaintiffs and refers to those agreements for their complete and accurate contents.

4. Cablevision admits the allegations in Paragraph 4.

5. Cablevision denies the allegations in Paragraph 5.

6. Cablevision denies the allegations in paragraph 6, except that Cablevision admits that it received a letter dated May 10, 2006, from Plaintiffs' corporate affiliate and refers to that letter for its complete and accurate contents. Cablevision states further that it does not intend to

negotiate with any Plaintiff for new and separate licenses for RS-DVRs, because, among other things, the use by customers of RS-DVRs does not violate Plaintiffs' copyrights.

7. Cablevision denies the allegations in paragraph 7. Answering further, Cablevision states that its RS-DVR is developed and ready for implementation, and further states that there is a dispute between Plaintiffs and Cablevision in the case.

8. Cablevision denies the allegations in paragraph 8.

9. Cablevision admits this is an action under 17 U.S.C. § 101 et. seq., and that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338 (a) and 2201. Cablevision denies the remaining allegations in paragraph 9.

10. Cablevision admits that it is subject to personal jurisdiction in this Court. Cablevision denies the remaining allegations in paragraph 10.

11. Cablevision admits the allegations in paragraph 11.

12. Cablevision denies the allegations in paragraph 12, except that Cablevision admits that it has entered into a license agreement with TCN LLLP, and refers to that agreement for its complete and accurate contents. Answering further, Cablevision states that it is without sufficient information to form a belief as to the truth of the allegations contained in paragraph 12 regarding TCN LLLP's corporate status, ownership of copyrights, and specific licensing activities.

13. Cablevision denies the allegations in paragraph 13, except that Cablevision admits that it has entered into a license agreement with CNN LLLP, and refers to that agreement for its complete and accurate contents. Answering further, Cablevision states that it is without sufficient information to form a belief as to the truth of the allegations contained in paragraph 13 regarding CNN's corporate status, ownership of copyrights, and specific licensing activities.

14. Cablevision admits the allegations in paragraph 14.

15. Cablevision admits the allegations in paragraph 15.

16. Cablevision denies that its current subscribers are unable to pause, rewind or fast forward programming as it is aired, and states that its current DVR subscribers can pause, rewind or fast-forward programming as it is telecast. Cablevision admits the remaining allegations in paragraph 16.

17. Cablevision admits the allegations in paragraph 17.

18. Cablevision admits that it has not licensed programming from Plaintiffs separately as "video on demand." Cablevision is without information sufficient to form a belief as to the remaining allegations of paragraph 18.

19. Cablevision admits that it sent a letter to many of the television programmers with which it has programming agreements and refers to the letter for its complete and accurate contents.

20. Cablevision denies the allegations in paragraph 20, except that Cablevision admits that its RS-DVR customers will be able to fast-forward, pause and rewind programs they have recorded, similarly to the way they can with traditional set-top storage DVRs already offered by Cablevision. Answering further, Cablevision denies that it will copy programs, and states that its RS-DVR customers will be able to record programs for private, in-home viewing. Cablevision further denies that it will transmit copied programs, and states that customers will retrieve and play their own unique copies that they have recorded themselves from their own dedicated computer memory.

21. Cablevision denies the allegations in paragraph 21, except that Cablevision admits that copies made by its RS-DVR customers "will be identical, or substantially similar," to the

original programming.

22. Cablevision admits that it will charge a fee for providing RS-DVRs to its customers, just as Cablevision currently charges customers a fee for providing traditional set-top storage DVRs. Cablevision denies the remaining allegations of paragraph 22.

23. Cablevision denies the allegations of paragraph 23, and states that its RS-DVR will provide the same basic functionality as its traditional set-top storage DVR.

24. Cablevision denies the allegations of paragraph 24.

25. Cablevision denies the allegations of paragraph 25.

26. Cablevision denies the allegations in paragraph 26, except that Cablevision admits that some of the RS-DVR components are manufactured by Arroyo Video Solutions, Inc.

27. Cablevision denies the allegations of paragraph 27, except that Cablevision admits that it refers to its RS-DVR as a remote storage digital video recorder. Further answering, Cablevision states that it has not entered into any agreements with Plaintiffs specifically to deliver programming as "video-on-demand" and further, with respect to its license agreements with the Plaintiffs relating to the Plaintiffs' network feeds, it refers to such license agreements for their complete and accurate contents. Cablevision further admits that press reports have included various descriptions of RS-DVR and refers to such press reports for a complete and accurate accounting of their contents.

28. Cablevision denies the allegations of paragraph 28.

29. Cablevision denies the allegations of paragraph 29.

30. Cablevision denies the allegations in paragraph 30, except that Cablevision admits that it received a letter dated May 10, 2006, from Plaintiffs' corporate affiliate and refers to that letter for its complete and accurate contents. Cablevision states further that it does not intend to

negotiate with any Plaintiff for new and separate licenses prior to marketing RS-DVR, because the use by customers of RS-DVR does not violate Plaintiffs' copyrights.

31. Cablevision admits there is an actual controversy between the parties, and denies the remaining allegations in paragraph 31.

32. Cablevision is without information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. Cablevision is without information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. Cablevision denies the allegations of paragraph 34.

35. Cablevision denies the allegations of paragraph 35.

36. Cablevision denies the allegations of paragraph 36.

AS TO COUNT ONE

37. Cablevision repeats and incorporates by reference its responses in paragraphs 1 through 36, above.

38. Cablevision is without information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. Cablevision denies the allegations of paragraph 39.

40. Cablevision denies the allegations in paragraph 40. Answering further, Cablevision states that it has not obtained from any Plaintiff new or separate licenses for RS-DVR, because the use by customers of RS-DVR does not violate Plaintiffs' copyrights.

41. Cablevision denies the allegations in paragraph 41. Answering further, Cablevision states that its RS-DVR is developed and ready for implementation, and that it does not intend to negotiate with any Plaintiff for a new and separate license for RS-DVR, because the

use by customers of RS-DVR does not violate Plaintiffs' copyrights.

42. Cablevision denies the allegations of paragraph 42.

43. Cablevision admits that there is an actual controversy between the parties. Cablevision denies the remaining allegations in paragraph 43.

AS TO COUNT TWO

44. Cablevision repeats and incorporates by reference its responses in paragraphs 1 through 43, above.

45. Cablevision is without information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Cablevision denies the allegations of paragraph 46.

47. Cablevision denies the allegations in paragraph 47. Answering further, Cablevision states that it has not obtained from any Plaintiff new or separate licenses for RS-DVR, because the use by customers of RS-DVR does not violate Plaintiffs' copyrights.

48. Cablevision admits that its RS-DVR is developed and ready for implementation, and that it does not intend to negotiate with any Plaintiff for a new and separate license for RS-DVR, because the use by customers of RS-DVR does not violate Plaintiffs' copyrights.

49. Cablevision denies the allegations of paragraph 49.

50. Cablevision admits that there is an actual controversy between the parties in the case. Cablevision denies the remaining allegations in paragraph 50.

WHEREFORE, Cablevision demands judgment in its favor by denying Plaintiffs' request for a declaration of infringement in relation to Cablevision's RS-DVR product; denying Plaintiffs' request for injunctive relief; awarding Cablevision its costs and reasonable attorneys' fees in accordance with 17 U.S.C. § 505 and other applicable law; and granting it such other and further relief as the Court may deem proper.

COUNTERCLAIM AND THIRD PARTY CLAIM

51. This is a counterclaim and third party claim for declaratory judgment under the copyright laws. Cablevision currently provides to its customers traditional set-top storage DVRs, which allow those customers to digitally record television programs for later personal use: a well-established fair use of copyrighted works. Cablevision recently announced its intent to deploy RS-DVR. With RS-DVR, programs recorded by the customer will be stored in his/her own dedicated computer memory at Cablevision's "head end," rather than in computer memory located inside the set-top box. Although this one technical change vis-à-vis traditional DVRs will have no impact on the private use and function of DVRs, counterclaim-defendants Cable News Network LP, LLLP ("CNN LLLP"), and The Cartoon Network, LP, LLLP ("TCN LLLP") (collectively, "Counterclaim Defendants"), and third party defendants Turner Broadcasting System, Inc. ("TBS"), Cable News Network LP, LLP ("CNN LLP"), Turner Network Sales, Inc. ("TNS, Inc."), Turner Classic Movies, L.P., LLLP ("Classics LP"), Turner Network Television LP, LLLP ("TNT LP"), and The Cartoon Network, LP, LLP ("TCN LLP") (collectively, "Third Party Claim Defendants") claim that by this change, Cablevision will somehow transform an accepted fair use under the copyright laws into a copyright violation. Counterclaim-Defendants have accordingly filed suit against Cablevision. Cablevision seeks this Court's judgment that its planned change will not subject it to direct copyright liability.

THE PARTIES

52. Counterclaim-Plaintiff Cablevision is a Delaware corporation with its principal place of business in Bethpage, New York. Cablevision provides cable television to customers in the New York metropolitan area, including portions of New York, New Jersey, Pennsylvania and

Connecticut.

53. Upon information and belief, Third Party Claim Defendant TBS is a Georgia corporation with principal places of business in New York, New York and Atlanta, Georgia. TBS is the parent corporation of Defendants CNN LLP, CNN LLLP, TNS, Inc., Classics LP, TNT, LP, TCN LLLP, and TCN LLP.

54. Upon information and belief, Counterclaim Defendant CNN LLLP is a Delaware Limited Partnership with principal places of business in New York, New York and Atlanta, Georgia. Similarly, upon information and belief, Third Party Claim Defendant CNN LLP is a subsidiary of TBS and a Delaware Limited Partnership with principal places of business in New York, New York and Atlanta, Georgia. Upon information and belief, CNN LLLP and CNN LLP transmit satellite delivered cable television programming services, which are carried on Cablevision's cable television system in New York.

55. Upon information and belief, Third Party Claim Defendant TNS, Inc. is a subsidiary of TBS and a Georgia corporation with principal places of business in New York, New York and Atlanta, Georgia. TNS, Inc. distributes the programming of television station WTBS video programming service known as the "TBS Superstation." TNS, Inc.'s programming is carried by Cablevision's cable television system in New York.

56. Upon information and belief, Third Party Claim Defendant Classics LP is a subsidiary of TBS and a Delaware Limited Partnership with its principal place of business in New York, New York. Classics LP transmits video programming service known as Turner Classic Movies, which is carried by Cablevision's cable television system in New York.

57. Upon information and belief, Third Party Claim Defendant TNT LP is a subsidiary of TBS and a Delaware Limited Partnership with its headquarters in New York, New

York. TNT LP transmits a programming service that generally consists of movies, dramatic shows, situation comedies, game shows, live professional sports, children's programming, special features, and entertainment programming. This programming service is carried by Cablevision's cable television system in New York.

58. Upon information and belief, Counterclaim Defendant TCN LLLP is a Delaware Limited Partnership with principal places of business in New York, New York and Atlanta, Georgia. Similarly, upon information and belief, Third Party-Defendant TCN LLP is a Delaware Limited Partnership with principal places of business in New York, New York and Atlanta, Georgia. Upon information and belief, TCN LLLP and TCN LLP transmit the programming service known as the Cartoon Network, which is carried by Cablevision's cable television system in New York.

JURISDICTION AND VENUE

59. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 seeking a declaration of the rights and/or other legal relations of the parties to this litigation with respect to an actual controversy arising under the copyright laws of the United States, 17 U.S.C. § 101 et seq.

60. This Court has exclusive jurisdiction over the copyright subject matter of this action pursuant to the Copyright Act (17 U.S.C. § 101 et seq.), 28 U.S.C. §§ 1331, 1338, and the Declaratory Judgment Act (28 U.S.C. § 2201).

61. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(a).

FACTS

62. Ever since the Supreme Court's landmark decision in *Sony*, it has been accepted that the use of a personal video recorder (whether a Betamax, a VCR, or a traditional set-top

storage DVR) to copy television programming for later personal viewing is a fair use that does not violate the copyright laws.

DVRs

63. In 1999, the first DVR was introduced. Traditional set-top storage DVRs use a computer hard-disk drive and other digital technology to allow consumers to record television programming and play it back later, just as they have been doing with VCRs and Sony Betamaxes for more than twenty years.

64. Cablevision has been providing traditional set-top storage DVRs to its customers since November 2004. Cablevision's customers pay a monthly fee to obtain and operate the DVR.

65. The DVR, like a VCR, is physically connected to the consumer's television set. However, unlike a VCR, a DVR must also be connected to an electronic program guide, populated by the DVR provider, that catalogues all television broadcasts available to that consumer. The consumer accesses the program guide through his or her remote control and is thus able to record any program available to him or her at a given time.

66. By selecting a program for recording, the customer uses the DVR to copy it (either in real time if the program is currently airing, or at the later time when the program airs) onto the hard drive of the consumer's in-home set-top DVR box, where it remains stored until deleted.

67. The traditional set-top storage DVR's recording ability is limited by the size of its hard drive; once the space on the hard drive is filled, the DVR will not record any new programs unless old ones are deleted.

68. As with the transition from the Betamax to VCRs, the transition from VCRs to

DVRs altered the specific technology of in-home television recording; however, the DVR, like the VCR and the Betamax before it, remains a time-shifting device that facilitates fair use. Indeed, there appears to be a general consensus in the television and film industries that DVRs do not violate the Copyright Act. Based on this consensus, DVR use and distribution has grown rapidly over the past six years, rising to approximately 8% of all American households in 2005. Some analysts expect that more than 25% of televisions will be equipped with DVRs by 2007.

69. Although the decision in *Sony* addressed fair use in the context of the Sony Betamax videotape recorder, the language of the decision makes clear that a consumer's recording for time-shifting in general constitutes a fair use. Indeed, the decision is so well accepted that, as technology has progressed from VCRs to DVRs, no legal action has been brought in which a content owner has challenged the fundamental principle that time-shifting using such devices is a non-infringing fair use.

70. None of the Counterclaim Defendants or Third Party Claim Defendants has objected to Cablevision's provision of DVRs in the 18 months since Cablevision began providing this product to its customers.

RS-DVR

71. On March 27, 2006, Cablevision announced its new DVR offering, RS-DVR, whereby the storage space that Cablevision provides to its customers will be located at Cablevision's facilities, rather than on the hard drives of traditional set-top storage DVR boxes. The provided storage space will simply be in a different location. The RS-DVR is identical to the traditional set-top storage DVR in almost all respects. The physical relocation of computer memory from within the DVR set-top box to Cablevision's facilities as part of RS-DVR will not affect how customers operate the DVR device.

72. Specifically, from a customer's perspective, the RS-DVR will function just like a traditional set-top storage DVR:

a. the customer must give the command from his or her remote control to record a program in his or her memory space;

b. each customer creates a separate and distinct copy of each program he or she records;

c. the customer's programs are stored in his or her own dedicated memory;

d. only the customer and those within his or her household have the ability to play the unique copy of the programs he or she has recorded, and customers will not be able to access or play programs that other customers have recorded;

e. the viewing must take place in the customer's home; and,

f. once the customer decides to erase his or her copy of a program, that copy ceases to exist.

73. Whether a customer utilizes a traditional set-top storage DVR or the RS-DVR, it is the customer who copies and plays back the recorded programming.

74. With its traditional set-top storage DVRs, Cablevision provides the customer with a Cablevision-owned, hard-drive set-top box for the customer's use in recording programming for later viewing. With RS-DVR, Cablevision provides the customer with his/her own dedicated storage on Cablevision-owned servers for the same customer use. Thus, with RS-DVR and its traditional set-top storage DVRs alike, Cablevision does no more than provide the customer with a Cablevision machine, including dedicated computer memory, to facilitate the customer's fair use.

75. The storage capacity of the RS-DVR for each customer will be less than or equal

to that currently offered in Cablevision's traditional set-top storage DVRs and many other in-home set-top storage DVRs.

76. The RS-DVR will permit the customer to make no greater use of the recording than is enabled by traditional set-top storage DVRs already in use. Specifically, the RS-DVR will not contain a feature that enables customers to send programs via the Internet, will not strip commercials from programs that the customer records, and will not allow for automatic commercial skipping.

77. Like traditional set-top storage DVRs, Cablevision's RS-DVR is not a VOD service. DVRs (including the RS-DVR) allow customers to record and time-shift programming that is, in the first instance, available to them as part of the cable service for which they have already paid. The customer decides which programs to record and must create the copy himself or herself by scheduling his or her own individual recording to take place at the actual time of the original telecast in order to have the ability to view his or her own copy of the programming at a later time. This is the time-shifting specifically authorized by the Supreme Court in *Sony*.

78. By contrast, programs offered through a VOD service are chosen and assembled by the cable provider, rather than being selected and time-shifted by the customer. Moreover, with VOD, the cable operator typically acquires a single copy of a program, makes and stores a small number of copies of this program on its VOD servers without any initiation from any customer, and makes these limited common copies available for repeated viewing by all of its VOD customers on an "on demand" basis. Thus, when a customer retrieves a program using VOD, the customer is not retrieving his or her own separate copy that the customer made for later viewing; rather, the customer is viewing the cable provider's shared copy that is made

available for viewing by multiple customers at any time during the VOD offering of the particular program.

79. Whether a customer utilizes a traditional set-top storage DVR or the RS-DVR, Cablevision does not transmit shared copies of programs to multiple customers. Rather, each customer retrieves and plays his or her own unique copy that he or she recorded, which copy is retrievable and viewable only by the customer who recorded it.

80. Cablevision expects that the costs of providing remote storage will be less than the costs of providing set-top DVRs with local storage and that those cost reductions will result in price reductions for Cablevision's customers.

THE DISPUTE

81. On or about March 27, 2006, Cablevision issued a press release describing its plan to perform a trial of the RS-DVR in June 2006.

82. Prior to its official press release, on March 21, 2006, Cablevision sent a letter to many of the television programmers with which it has programming agreements (including Counterclaim and Third Party Claim Defendants) that enclosed the planned March 27 press release and provided information concerning the RS-DVR and the scheduled trial.

83. By letter dated May 10, 2006 (the "TBS Letter"), Executive Vice President and General Counsel for TBS, on behalf of the Counterclaim and Third Party Claim Defendants, notified Cablevision of TBS's position that Cablevision's implementation of its RS-DVR, even on a trial basis, "would be illegal under the Copyright laws." The letter went on to threaten that Turner Broadcasting Systems, "reserve[d] all rights to seek any equitable or legal remedies available."

84. Counterclaim Defendants TCN LLLP and CNN LLLP have brought suit against

Cablevision claiming that its RS-DVR will infringe their exclusive rights under the Copyright Act.

85. Cablevision's RS-DVR is developed and ready for implementation.

86. Because it has been established for more than two decades that recording television programming for private, in-home playback constitutes fair use, and because nothing about the RS-DVR will alter the manner in which customers record and watch television programming, Cablevision seeks a declaratory judgment that its planned distribution of its RS-DVR will not subject it to direct liability under the Copyright Act.

CLAIMS FOR RELIEF

COUNT I
(Request for Declaratory Judgment against TBS, CNN LLLP, CNN LLP, TNS, Inc., Classics LP, TNT LP, TCN LLLP, and TCN LLP – Copyright Infringement)

87. Cablevision repeats and realleges the allegations set forth in paragraphs 51-87 herein.

88. As described above, there exists an actual and justiciable controversy between Cablevision and Counterclaim and Third Party Claim Defendants as to whether Cablevision's provision of its RS-DVR will subject Cablevision to direct liability for copyright infringement.

89. Counterclaim and Third Party Claim Defendants do not claim that Cablevision's offering, providing, maintaining and/or operating its traditional set-top storage DVRs subjects it to indirect liability for infringing their copyrights.

90. Instead, Counterclaim and Third Party Claim Defendants claim that Cablevision's offering, providing, maintaining and/or operating its RS-DVR product will subject Cablevision to direct liability for infringing Counterclaim and Third Party Claim Defendants' copyrights.

91. Cablevision seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed.

R. Civ. P. 57 that its offering, providing, maintaining and/or operating its RS-DVR product will not subject it to direct liability for infringing any of Counterclaim and/or Third Part Claim Defendants' copyrights.

WHEREFORE, Counterclaim Plaintiff Cablevision respectfully requests that this Court enter judgment in its favor and against Counterclaim and Third Party Claim Defendants, as follows:

a. declaring that Cablevision's offering, providing, maintaining and/or operating its RS-DVR product will not subject it to direct liability for infringing any of Counterclaim and/or Third Party Claim Defendants' copyrights;

b. awarding Counterclaim-Plaintiffs their costs and reasonable attorneys' fees in accordance with 17 U.S.C. § 505 and other applicable law; and

c. granting Cablevision such other and further relief as the Court deems just and proper.

Dated: June 19, 2006
New York, New York

Respectfully submitted,

Cablevision Systems Corporation, Inc. and
CSC Holdings, Inc.

By its attorneys,

/s/ Benjamin Hershkowitz

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CERTIFICATE OF SERVICE

I hereby certify that this document entitled Answer to Complaint, Counterclaim, and Third Party Claim filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies, via first class mail, postage pre-paid, will be sent to those indicated as non registered participants on June 19, 2006.

/s/ Benjamin Hershkowitz